



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,233	02/18/2004	Mike Nipke	15554US01	2367

7590 04/11/2005

McAndrews, Held & Malloy, Ltd.
34th Floor
500 W. Madison Street
Chicago, IL 60661

EXAMINER

YIP, WINNIE S

ART UNIT	PAPER NUMBER
----------	--------------

3637

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,233

Applicant(s)

NIPKE, MIKE

Examiner

Winnie Yip

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 27 January 2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Part II DETAILED ACTION

This office action is in response to applicant's amendment filed on January 27, 2005

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Specification

1. The incorporation of essential material in the specification by reference to an unpublished U.S. application (xx/xxxxxx) (see Page 17, line 3) is improper. Applicant is required to amend the disclosure to include the application Serial No. and the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the feature of "a lighting system" which is "removably connected to said undercanopy using said reclosable fastening device" (claims 1 and 9) must be shown or the feature canceled from the claim. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

Art Unit: 3637

even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. Claims 1-2, 4, 6-11, and 13-20 stand rejected under 35 U.S.C. 102(b) as being anticipated by Wu (US Patent No. 6,126,293).

Wu shows and teaches an umbrella being assembled, the umbrella comprising a pole portion (1), a canopy portion (5) inherently having an undercanopy portion (52), a plurality of canopy ribs (21) coupled to the undercanopy portion by ties (F), a plurality of support ribs (2) coupled to the pole portion and the respective canopy ribs, a reclosable fastening system including a first member having a first portion being of a tip sleeve (322) and a second member having a second portion being of a tip holder (321), the tip holder (321) being movably secured to canopy ribs (24), and a lighting system including a tip illuminator (32) being removably secured to the tip holder, and the tip sleeve removably engaged to the tip holder by a clip (321L)

in a reclosable manner, and the tip sleeve removable secured to the undercanopy portion (52) by ties (F).

Claim Rejections - 35 USC § 103

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rushing '931 in view of Chin-Hunge et al. (US Patent No. 5,085,239).

Rushing shows and teaches an umbrella being assembled, the umbrella comprising a pole portion (16), a plurality of canopy ribs (28), a plurality of support ribs (no number, see Fig. 2) coupled to the pole portions and the respective canopy ribs, a canopy portion (30) being removably coupled to the canopy ribs by fastening means, the canopy portion (30) inherently having an undercanopy portion, a plurality of plastic zip tie (32) coupled to canopy ribs, and a lighting system which includes a plurality of wired lights (14) being removably connected along the canopy ribs by the plastic zip ties (32). Although Rushing does not specifically define the plastic zip ties being fixedly connected to the undercanopy portion of the canopy portion and being reclosable to removably connect the wired lights to the ribs and to the undercanopy portion as claimed. Chi-Hung et al. teaches an umbrella (see Figs. 7-9) comprising a canopy portion (90) supported by a plurality of ribs (60), wherein the canopy portion (90) inherently includes an undercanopy portion, the undercanopy portion having a plurality of reclosable fastening devices (92) each including a first bending portion having a female snap, and a second member having an opposing male snap being removably engaged with the female snap for removably connecting the canopy rib (60) to the undercanopy portion. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the umbrella of Rushing having the fastening device, the zip ties, including first and second members with opposing female and male

Art Unit: 3637

snaps, being connected to the undercanopy portion as taught by Chin-Hung et al. for removably connecting the wired lights to the ribs and securing the canopy to the ribs.

5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rushing '931 in view of Sadowski et al. (US Patent No. 4,979,535).

Rushing shows and teaches an umbrella being assembled, the umbrella comprising a pole portion (16), a plurality of canopy ribs (28), a plurality of support ribs (no number, see Fig. 2) coupled to the pole portions and the respective canopy ribs, a canopy portion (30) being removably coupled to the canopy ribs by fastening means, the canopy portion (30) inherently having an undercanopy portion, a plurality of plastic zip tie (32) coupled to canopy ribs, and a lighting system which includes a plurality of wired lights (14) being removably connected along the canopy ribs by the plastic zip ties (32). Although Rushing does not specifically define the plastic zip ties being fixedly connected to the undercanopy portion of the canopy portion and being reclosable to removably connect the wired lights to the ribs and to the undercanopy portion as claimed, Sadowski et al. teach an umbrella comprising a canopy (22) having an undercanopy portion (22a), a plurality of canopy ribs (16), a reclosable fastening device (28) being of a Velcro strip (30) including a first member having a first Velcro pad (32) fixedly connected to the undercanopy portion (22a), and a second member having a second Velcro pad (32) and a bending portion being moved to engage with the first member for removably coupling the canopy rib (16) to the undercanopy portion (22a). It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the umbrella of Rushing having the fastening device, the zip ties, including first and second members with opposing

Art Unit: 3637

female and male Velcro pads, being connected to the undercanopy portion and to be ribs as taught by Sadowski et al. for removably connecting the wired lights and ribs to the canopy such that wired lights can be easily replaced.

Response to Argument

6. Applicant's arguments with respect to claims 1-20 under U.S.C. 102/103, and specifically to the feature of reclosable fastening device for removably connecting the lighting system has been positively claimed and considered. This feature was not positively and specifically claimed. Therefore, this argument is deemed to be moot in view of the new grounds of rejection.

Further, in response to applicant's argument that the reference to Wu fail to teach the ribs 24 and the fabric canopy 5 being distinct members, and fails to teach the lights being attached to an undercanopy of an umbrella, it is not deemed persuasive because of, first, applicant claims the umbrella "comprising" components, "Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still forms a construct within the scope of the claim); *Moleculon Research Corp. v. CBS, Inc.*, 793F.2d 1261, 229USPQ 805 (Fed. Cir. 1986); *In re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA19871); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948). Therefore, all components of the claimed invention are not necessary to be arranged in order. Claims 1, 9, and 20 do not recite further structural limitations about the reclosable fastening system. Second, Wu teaches the light (32) being removably connected to the rib which is coupled to the undercanopy portion along periphery area (52). Therefore, the canopy ribs would also be considered as a part of the

Art Unit: 3637

fastening system which is coupled to the undercanopy portion. The light is considered being also coupled to the undercanopy portion as claimed. So, the rejections are stand.

ACTION IS FINAL

7. Applicant's amendment necessitated the new grounds of rejection. Accordingly, THIS ACTION IS MADE FINAL. See M.P.E.P. ' 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. ' 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. ' 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.


Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip
Primary Examiner
Art Unit 3637

wsy
April 5, 2005